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## *A Discussion and Analysis of the "Ability to Benefit" Provisions in Title IV*

*by Wayne Riddle*

The Education Amendments of 1976 (P.L. 94-482) first authorized students at post-secondary educational institutions who lack a high school diploma, or its equivalent, to receive Federal student aid for which they are otherwise qualified, under the programs of Title IV, Higher Education Act (HEA).<sup>1</sup> This authorization at first applied only to applicants for aid at "institutions of higher education," but was expanded under the Middle Income Student Assistance Act of 1978 (P.L. 95-566) to include "postsecondary vocational institutions" and "proprietary schools" as well.<sup>2</sup> Under these HEA provisions, students lacking a high school diploma may receive Federal student aid only if they have the "ability to benefit" from the educational program for which they seek financial assistance. The determination of this "ability" is left to the educational institution.

According to committee reports accompanying the "ability to benefit" legislation, the provision was adopted in order to expand effective access to post-secondary education for adult and other "non-traditional" (such as part-time) students, and to recognize the existence of many public community and other colleges which any prospective student above the compulsory education age for high school (whether a high school graduate or not) was eligible to attend. Postsecondary educational institutions were cautioned by Congress not to lower admissions standards or otherwise encourage individuals unable to "benefit" from their educational programs to register because of the broadening of student aid eligibility. According to the House Committee on Education and Labor report on the Education Amendments of 1976, "[S]uch 'ability to benefit' is, of course, a matter for the institution, and not the Commissioner, to determine. The primary intent of this change is to accommodate many public institutions which are required under State law to admit any student beyond the compulsory school attendance age. The Committee is not encouraging institutions generally to lower admissions requirements by admitting unqualified students solely to maintain or increase enrollments."<sup>3</sup>

In its budget recommendations for fiscal year (FY) 1986, the Reagan Administration has requested that only recipients of high school diplomas or their equivalent be eligible to receive assistance under the student financial assistance programs of Title IV, Higher Education Act. In testimony before the House Subcommittee on Labor, Health and Human Services, and Education Appropriations, Department of Education officials stated that the "ability to benefit" eligibility criterion should be deleted from the HEA because students should be required to complete secondary education before receiving Federal subsidies for further education. Administration spokesmen also argued that the "GAO [General Accounting Office] has reported that we have high dropout rates, as well as lax requirements for testing, among those who are admitted without either the high school diploma or the GED."<sup>4</sup>

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In the FY 1986 appropriation hearings, Department of Education (ED) officials estimated that deletion of the "ability to benefit" provision would eliminate approximately 16,000 students from eligibility for the Guaranteed Student Loan (GSL) program in academic year 1986-87, at a savings of \$1 million in Federal costs and rising to an estimated \$20 million per year in FY 1990. It has been separately reported that the Department estimates that this legislative change would eliminate approximately 119,000 students from eligibility for Pell Grants in 1986-87, at a Federal cost savings of about \$162 million.<sup>5</sup>

This paper provides a discussion and analysis of the "ability to benefit" provision and the Administration proposal to eliminate it as a basis for student aid eligibility, in the following sections:

- regulations and data related to the provision;
- pro and con arguments regarding "ability to benefit"; and
- policy alternatives in this area.

#### *Regulations and Data Regarding "Ability to Benefit"*

The "ability to benefit" provision is an example of the emphasis in the HEA Title IV student aid programs on expansion of and access to postsecondary educational opportunity to as many students as possible. "Equality of access to postsecondary education" is stated as the first of the purposes of the HEA (sec. 101 (2)(A)). The purpose of the "ability to benefit" provision is to allow access by students lacking a high school diploma to the financial assistance that could make the difference between "affordable" and "financially unattainable" postsecondary education. The provision implies that Federal financial aid should be available to any postsecondary student, to the extent of his/her abilities or interests, attending any accredited institution, whether degree-granting or not, taking into account only the costs of the educational program and the student's and his/her family's financial resources. It is also implied that decisions regarding who should undertake postsecondary education, in what subject areas and at which institutions, are not insignificant, but should be made by students and institutions, and not be substantially influenced by the Federal Government through the allocation of student assistance funds. This may be contrasted with hypothetical alternative systems for allocation of Federal student aid funds, such as "merit-based" aid (directly taking into account students' academic ability as well as, or instead of, financial need), aid focused on "national priority" subject areas (e.g., mathematics and the sciences, foreign languages, or teaching), or the distribution of all Federal student aid to postsecondary education through institutions rather than our current primarily "consumer oriented" student aid system.

Regulations governing the "ability to benefit" basis for aid eligibility for students lacking a high school diploma or its equivalent are found in Title 34, Part 668.6 of the Code of Federal Regulations. The regulations, as well as the underlying legislation, are worded so as to refer to both individual and institutional eligibility to participate in Federal student aid programs. These provisions are rather brief, stating primarily that "[A]n institution must be able to demonstrate, upon request by the Secretary, that these students [i.e., those who are not high school graduates] have the ability to benefit" from the educational program for which aid is requested. Educational institutions are to "develop and consistently apply criteria for determining whether these students have the ability to benefit from the education or training offered" (34 CFR 668.6); and this responsibility lies almost fully with the schools themselves, with little concrete guidance from the legislation or program regulations. One possible disadvantage of this approach is that educational institutions have been given insufficient Federal guidance to avoid overly lax self-

enforcement of the "ability to benefit" provision, especially considering that the institutions may be subject to pressures to expand enrollments without regard to whether students are sufficiently well prepared to benefit from the educational program.

In addition, the vagueness of the concept of "ability to benefit," without the supplement of more detailed regulations, might lead to "honest misunderstandings" on the part of administrators of postsecondary educational institutions. Some might take the position that anyone has the ability to derive *some* benefit from an educational program, or that a student's willingness to enroll in a program is sufficient indication of proper motivation and willingness to benefit. Other institutions might conduct "tests" of the knowledge and interests of prospective students, but establish such low thresholds for entrance that virtually anyone could "pass." Institutions required to have an "open admissions" policy could hardly be expected to create substantial barriers to either admission or receipt of student aid. Other institutions admitting non-high school graduates might interpret the "ability to benefit" provision more strictly, considering it to be appropriate as well as in the institution's best interest to set relatively high standards of knowledge, ability, and motivation for admission and receipt of student aid.

Complete data on the proportion of student aid recipients, or of postsecondary students in general, who lack a high school diploma are not available. There are, however, estimates based on a number of sample surveys. In considering these data, and in later discussions, postsecondary educational institutions are divided into three general categories, as provided in regulations for the HEA student aid program: public and non-profit private colleges which grant degrees of at least the Associate (two-year) level; public and private, non-profit, non-degree-granting institutions, such as public area vocational schools or health technician programs conducted by private, non-profit hospitals; and proprietary (profit-making) non-degree-granting institutions (including correspondence schools). Students are eligible for Federal student aid at any of these institutions, as long as the schools are accredited by an accrediting association recognized by the Secretary of Education. Most analyses of the "ability to benefit" provision are focused on proprietary schools, since it is generally assumed that students lacking a high school diploma or equivalent are found in greatest proportion, if not number, in these schools.

#### *A. Public and Non-Profit Private Colleges*

The most comprehensive annual survey of the detailed characteristics of college students is the survey of a nationally-representative sample of full-time, freshman students conducted by the Cooperative Institutional Research Program (CIRP) of the American Council on Education and the University of California at Los Angeles.<sup>6</sup> According to this survey, for fall 1984 freshman students, only 0.2 percent reported that they had received neither a high school diploma nor a GED certificate. This percentage rose to 0.4 percent for two-year college students.

These data are self-reported and apply only to full-time freshman students. Therefore, the sample may be inappropriate for the current topic, since students lacking a standard, secondary-level preparation are more likely to be part-time students or to attend non-degree-granting institutions, which are not included in the CIRP sample.

#### *B. Proprietary Schools, Community Colleges, and Occupational Programs*

Several studies have found that a substantial proportion of students in community colleges or proprietary schools lack high school diplomas. A 1980 report on a national sample of students in occupational programs in community colleges and

proprietary schools found that 6 percent of the community college students and 9 percent of those in proprietary schools lacked a high school diploma or equivalent.<sup>7</sup> A 1976 Federal Trade Commission report indicated that approximately 20 percent of proprietary correspondence school students, and 10 percent of residential proprietary school students, lacked a high school education.<sup>8</sup> In testimony before the House Subcommittee on Postsecondary Education on August 1, 1985, a community college representative estimated that 30 percent of the students enrolled in urban community colleges lacked a high school diploma or equivalent.<sup>9</sup> A 1979 Department of Education survey found that approximately 8.2 percent of the students in all non-degree-granting postsecondary schools had not received a high school diploma or equivalent. The proportion of non-high school graduates varied widely by type of occupational program, from a low of 1.1 percent for the health professions to a high of 14.2 percent for trade and industrial occupations.<sup>10</sup>

Finally, a recent GAO study, based on a representative sample of proprietary schools, estimated that 28 percent of the qualified students of such schools lacked a high school diploma or equivalent.<sup>11</sup> The authors of this GAO report further found that these students' "ability to benefit" was typically determined through administration of a test by the school, but that 18 percent of all students were admitted even though they lacked a high school diploma *and* were unqualified. According to the GAO, these unqualified students were admitted as a result of "abuses" of the testing process — for example, tests were normally administered but not consistently so, tests were given multiple times, or students were admitted even though they had not passed the test. However, of the students deemed by the GAO to be fully qualified to be admitted to these proprietary schools, 28 percent were admitted without a high school diploma or equivalent.

Turning from data on types of students in each institutional sector to rates of participation in Federal student aid programs, one study for 1978-79 found the rate of student participation in the Basic Educational Opportunity Grant (now Pell Grant) program to be greatest (53 percent) in proprietary schools, with participation in other types of postsecondary educational institutions only about one-half as high (29 percent overall, 26 percent in community colleges). In 1979-80, proprietary students received an estimated 10 percent of all Basic Grant funds.<sup>12</sup> Note that the data in this paragraph include *all* students in each type of institution, not just those lacking a high school diploma. Comparable data for the Guaranteed Student Loan (GSL) program, the other major student aid program authorized in HEA Title IV, are unavailable.

Finally, the Department of Education has reportedly estimated that termination of eligibility for non-high school graduates would reduce 1986-87 participation in the Pell Grant program by approximately 119,000 students (4.2 percent of total participation estimated for 1985-86), and in the GSL program by approximately 16,000 students (0.5 percent of total participation estimated for 1985-86), rising to 43,000 students in 1987-88. These estimates of substantially greater impact on the Pell Grant than the GSL program are in accord with study findings that proprietary school students, who are relatively likely to be non-high school graduates, tend to rely more heavily on grant than loan forms of financial aid.<sup>13</sup>

#### *Pro and Con Arguments Regarding the "Ability to Benefit" Student Aid Eligibility Criterion*

Listed below are selected arguments that might be made by those who favor retention versus those who favor elimination of the "ability to benefit" provision — i.e., the eligibility of non-high school graduates for Federal student aid authorized under Title IV of the Higher Education Act.

A. *"The 'Ability to Benefit' Provision Represents the Expansion of Meaningful Access to Postsecondary Education to All Who Can Properly Benefit From It"*

As indicated in the introductory section of this paper, the primary stated purpose of adopting the "ability to benefit" provision was to expand effective access to postsecondary education, by reducing financial barriers for all needy students who might properly benefit from postsecondary education, whether or not they were high school graduates. This was also part of a trend toward increasing postsecondary education opportunities for adult and other non-traditional students.

Supporters of the "ability to benefit" provision have argued that even though non-high school graduates are often "high academic risks" — i.e., lacking in many of the traditional qualifications for success in postsecondary education, such as a high school diploma — the contribution to personal and economic development of those who succeed in their educational programs would make the investment in student aid for them and their peers worthwhile. In response to a recent GAO report, the ED stated that admissions criteria are the responsibility of educational institutions, not the Federal Government, and "that Congress intended that individuals should have every opportunity to obtain training to prepare them for employment."<sup>14</sup> Supporters of "ability to benefit" might argue that this response is not consistent with the current ED position that the provision should be terminated.

Supporters of "ability to benefit" also argue that older, part-time students might have particular difficulty paying for educational programs if the "ability to benefit" provision were eliminated because substantial proportions of these people lack high school diplomas. Economically disadvantaged and minority youth would also likely be disproportionately affected, because of their higher than average high school dropout rates. Considering the nature of the population assisted, they argue, the provision of student aid would be cost-beneficial to society even if there are high rates of program non-completion. Supporters believe that opponents of "ability to benefit" are elitists who are enamored of an outmoded vision of postsecondary education for the few of high academic talent and motivation. This concept, they contend, is wholly inappropriate to contemporary society where occupations of virtually all types increasingly require some amount of postsecondary education.

Opponents of the "ability to benefit" provision argue that while there might be some positive value in virtually all forms of postsecondary education for almost any prospective student, benefits must be compared to costs. With high non-completion rates (see below) characterizing the educational programs in which non-high school graduates are typically enrolled, opponents argue that much Federal assistance is being wasted. This should be of great concern at a time of unprecedented Federal budget deficits and limited student aid resources. Available funds should be more efficiently spent, by concentrating them on the student groups most likely to actually complete their educational programs.

Opponents might further argue that as a Nation we have suffered through a period of declining educational standards, from which we are now beginning to recover as a result of efforts in several States to raise high school graduation requirements, among other actions. They contend that a requirement that recipients of Federal postsecondary student aid be high school graduates is minimal. High school dropouts can relatively easily complete a GED program, which is widely available. Completion of secondary education will almost invariably improve the students' ability to make proper use of their postsecondary educational opportunities.

Finally, opponents argue, the issue is not one of refusing admission to non-high school graduates, but simply one of not granting them Federal student aid. Although the current "ability to benefit" provision is constructed in a way that

mixes student and institutional eligibility, the provision could be eliminated in a way that would leave postsecondary educational institutions free to enroll students without a high school diploma, without jeopardizing the eligibility for Federal student aid of the high school graduates attending those schools. Termination of this provision would simply represent more efficient targeting of limited Federal student aid funds.

*B. "The 'Ability to Benefit' Provision Simply Recognizes the 'Reality' That Many Postsecondary Students Lack High School Diplomas"*

Proponents of the "ability to benefit" provision might argue that since many community colleges, proprietary schools, and other non-degree-granting institutions, as well as a few four-year colleges, routinely admit students lacking a high school diploma or its equivalent, it would be inappropriate for the Federal Government to set higher standards for receipt of student aid. According to this line of argument, although the educational institutions set admissions standards, *effective* access would be limited by financial constraints for many students if they were not eligible for Federal assistance. Therefore, requiring a high school diploma or equivalent for student aid eligibility would be tantamount to Federal interference in the educational admissions process, which almost all policy-makers consider to be inappropriate.

Opponents of the "ability to benefit" provision might argue that the issue is *not* one of admissions policies but of the allocation of scarce financial assistance. As noted above, the elimination of this provision need not directly affect any institution's admissions policies; it would simply set a minimal standard for receipt of a Federal subsidy, something which no student has a "right" to receive. Further, if States, or the firms operating proprietary schools, wish to lower their standards for admission, it is not automatically necessary for the Federal Government to follow them in that direction, especially when the emphasis in recent Federal policy statements has been to encourage *higher* educational standards.

*C. "Termination of the 'Ability to Benefit' Provision Would Unfairly Jeopardize Many Proprietary Schools"*

Proprietary schools have been a major — often the primary — focus of debate over retention of the "ability to benefit" provision. Due to the large variation in estimates of the proportions of students in various types of postsecondary educational institutions who lack a high school diploma or equivalent, it is unclear whether the majority of such students attend community (and, occasionally, other) colleges or non-degree-granting institutions. However, whichever sector enrolls the majority of such students, it is generally assumed that large numbers, and certainly the largest institutional proportions, of the students receiving Federal aid as a result of this provision attend non-collegiate institutions, most of which are proprietary schools. According to ED, in 1982, 65 percent of non-collegiate, postsecondary, occupational schools were proprietary, 14 percent were private, non-profit institutions, and the remainder were public.

As a result of these factors, debate over the "ability to benefit" provision has often been combined with debate over Federal aid to proprietary school students in general. Proponents of maximum participation of proprietary school students in Federal student aid programs have focused on the "pioneering" role of these institutions in the provision of postsecondary occupational education, their longer history and continuing dominant role in such non-collegiate programs in many technical and business fields. They also emphasize the special needs of students in this sector. According to a 1981-82 survey, 50 percent of Federal aid recipients at these institutions were minorities, and 60 percent were female. On average, 15.9 per-

cent of educational costs for these students were paid by Basic (now Pell) Grants, and 18.7 percent by GSLs (somewhat contradicting other evidence of limited reliance on GSLs by these students).<sup>15</sup>

As noted above, significant proponents of proprietary school students lack a high school diploma. This, combined with their disproportionate share of minority, female, and low-income students indicate that the population being served by these schools is a relatively "high risk" one — one relatively unlikely to be served by traditional, especially four-year, colleges. Proponents of these schools argue that they are providing important services not only to the students but society at large by making available "postsecondary education of last resort" for these students who without such education would face much greater probability of unemployment or perennially low-paying jobs. They also argue that proprietary schools are more efficient providers of occupational education than are public community colleges. According to a major survey of this question, in which proprietary and community college students in similar programs were compared, 69 percent of the proprietary students were found to have completed their program in 28 months, versus 46 percent of the community college students.<sup>16</sup>

According to a report of the National Commission on Student Financial Assistance, "Federal student aid has accounted in large measure for the growth of the proprietary school industry, and as long as student aid is a significant share of student tuitions, Federal policies will likely exert a powerful effect on the schools' behavior."<sup>17</sup> The Commission also reported that, "[I]nsofar as data permit generalizations, proprietary schools appear to have high rates of compliance with Federal program requirements".<sup>18</sup> Representatives of proprietary school organizations have regularly argued that these schools are monitored more closely than other postsecondary institutions by ED and other Federal and State agencies, but have experienced no greater irregularities in administering Federal student aid programs than have other, similar institutions, such as public community colleges.

In contrast, in making its recommendation for termination of the "ability to benefit" provision, ED has stated that, "[T]he current provision has been the source of documented abuse by proprietary institutions."<sup>19</sup> This determination appears to rely primarily on two reports. The first, prepared by the Federal Trade Commission and published in 1976, concluded that, "... [P]roprietary schools engage in a number of false, deceptive, and unfair recruiting and enrollment practices ... [M]any of these practices result in the enrollment of consumers who have neither the ability, nor the inclination, to complete their training. While many schools will purport to have rigid admission standards which serve to screen out all but the most highly qualified and motivated applicants, the evidence demonstrates a prevailing attitude to enroll large numbers of students indiscriminantly."<sup>20</sup>

The second report was issued in 1984 by the GAO and was entitled "Many Proprietary Schools Do Not Comply With Department Of Education's Pell Grant Program Regulations." This report, based on a sample survey of 35 proprietary schools participating in the Pell Grant program, directly addressed issues related to the "ability to benefit" provision. The GAO found that these schools, which administered an estimated \$278 million in Pell Grants in FY 1981, enrolled significant numbers of unqualified students (about 18 percent of total enrollments), had high dropout rates (51 percent for qualified students, 74 percent for unqualified students), often failed to implement "satisfactory progress standards" for continued receipt of student aid, often misrepresented educational programs and outcomes, and engaged in other forms of maladministration of student aid programs. Details of the findings of the GAO report are discussed throughout this paper. Critics of the current "ability to benefit" provision have used this GAO report as a primary



rationale for proposals to terminate it. As a result, the report has become the focus of much attention, especially during a hearing before the House Subcommittee on Postsecondary Education on August 1, 1985.

Those critics of the report who represent or have been under contract to proprietary school organizations have argued that the GAO based its findings on an overly small and unrepresentative sample of proprietary schools, referred to ED program requirements that are not actually found in program regulations (such as requiring a test to measure "ability to benefit" in all cases), failed to distinguish between random and systematic errors by school administrators, and failed to compare proprietary schools to comparable institutions in other sectors of postsecondary education.<sup>21</sup>

D. *"The 'Ability to Benefit' Provision Should be Eliminated in Order to Emphasize the Need for Stricter Standards and Greater Accountability in Federal Student Aid Programs"*

Opponents of the "ability to benefit" provision have argued that its elimination would represent a minimal application of needed educational standards to the receipt of Federal student aid. In particular, opponents have argued that students admitted to postsecondary schools without a high school diploma, or its equivalent, have substantially higher dropout rates than those who begin postsecondary schooling with secondary credentials. The GAO report referred to above found proprietary school dropout rates to be high for all students, but to be substantially higher for those who had not completed high school — 61 percent of the students properly admitted on the basis of "ability to benefit" dropped out versus 47 percent of high school graduates; for the patently unqualified students who were nevertheless admitted, also on the basis of "ability to benefit," the dropout rate was estimated to be 74 percent. Interestingly, cases were discovered where even program graduates who had been admitted on the basis of "ability to benefit" still could not obtain State licenses to practice their occupation without obtaining a high school diploma.

In response, those favoring retention of the current provision have utilized several lines of argument. First, they have contended that dropout data alone do not necessarily measure a lack of benefit from an educational program. Students may drop out for many reasons, including the "premature" availability of a job in the field for which the student is training. Whatever the reason for dropping out, a partially completed educational program may nevertheless provide significant benefits to the student. Second, to the extent that dropout rates are significant, these have been estimated to be higher for public institution occupational education programs than for proprietary schools. Even ignoring the lack of comparability between institutional and student groups, studies of four-year colleges have estimated their students' rate of graduation within four years of entry at no more than 45-60 percent.<sup>22</sup>

Third, proponents of the "ability to benefit" provision have argued that the mere possession of a high school diploma is a poor predictor of likely success in postsecondary education. In fact, the entire process of measuring probability of success in educational programs is so complex that a greater degree of Federal intrusion into the process (as by eliminating eligibility for non-high school graduates) is unwarranted. Proponents of "ability to benefit" might argue that its elimination may effectively eliminate educational opportunities for many prospective students who might be able to overcome the academic and other barriers they face and greatly improve their occupational status and economic contribution to society. If standards must be raised in allocation of Federal student aid, they argue, the changes should

be limited to areas more likely to increase program completion rates, such as strengthening academic progress requirements, or establishing requirements for better guidance and counseling of "at risk" students.

E. *"The 'Ability to Benefit' Provision Is Inherently Unenforceable"*

Opponents of the current "ability to benefit" requirement might argue that the provision is inherently unenforceable because of its vagueness and reliance ultimately on self-enforcement by schools and accreditation associations. Without more specific legislative and/or regulatory requirements, or vastly expanded ED staff for program monitoring and enforcement, they argue that it is highly unlikely that substantial abuse of this eligibility criterion can be avoided.

Opponents of "ability to benefit" might argue that the schools involved and their accreditation associations simply have too many financial and other incentives not to strictly self-enforce the "ability to benefit" requirement. They argue that the schools, especially the proprietary institutions that are more fully dependent on tuition revenues than other types of postsecondary institutions, have a primary incentive to maximize enrollments, while their accrediting associations have a primary incentive to maximize their institutional affiliations and membership. The institutions' willingness to turn away a "paying customer," whether or not the payment is subsidized by the Federal Government, is in most cases likely to be minimal.

Opponents of "ability to benefit" argue that the "tests" and other measures used by schools to comply with the "ability to benefit" requirement are often only a superficial form of apparent compliance, and are prevented from serving as an effective barrier to enrollment of students who lack the knowledge or ability to complete the schools' educational program. For example, the GAO report referred to above found numerous cases of students being allowed to repeatedly take an examination until they passed it, or the setting of extraordinary low thresholds for passing scores. Opponents of the "ability to benefit" provision argue that if the "ability to benefit" criterion is to be a meaningful and effective standard for admission and/or Federal aid eligibility, it must be made more concrete and detailed, and its enforcement must actively involve the ED or at least State agencies, and not just the institutions and their accrediting agencies.

Opponents of "ability to benefit" might point out that according to the GAO report on Pell Grant administration by proprietary schools, staff limitations at ED, State licensing agencies, and accrediting associations severely limit enforcement of Pell Grant regulations. The standard of site visits by ED staff every three years was frequently not met, nor was there much effective effort to follow up on required corrective actions. Further, accreditation involves no continuing enforcement or monitoring activities. One report on proprietary schools in New York State concluded that, "[B]ecause they [the accrediting associations] are composed of school operators, they come closer to being trade associations than objective evaluating bodies. And because schools would be barred from Federal programs without accreditation, school operators are loathe to withdraw accreditation from fellow operators."<sup>23</sup> A final potential source of monitoring and enforcement activity — the independent audits required of institutions where students receive Federal aid — were found by the GAO to be an unreliable enforcement mechanism, because in most cases they failed to identify program violations discovered by GAO.

In response, proponents of the current "ability to benefit" provision argue that enforcement is not really lax, because the provision itself is, and is intended to be, very flexible. They might argue that in a postsecondary education system as large, diverse, and disaggregated as that in the U.S., it is more appropriate for the Federal Government to emphasize institutional autonomy and individual student choice to

the maximum extent possible. According to the House Committee on Education and Labor report on the Education Amendments of 1976. "[S]uch 'ability to benefit' is, of course, a matter for the institution, and not the Commissioner, to determine."<sup>24</sup> The ED regulations on "ability to benefit" do not require that schools conduct a test of applicants, nor should they. Proponents of "ability to benefit" have argued that when tests are administered and prospective students are allowed to take them more than once, this is done only to relieve the "test anxiety" of a population often uncomfortable with academic environments. There is usually no complaint about the frequent practice of prospective students taking the Scholastic Aptitude Test more than once in an effort to raise their scores. Aside from this, proprietary school representatives have consistently argued that their schools are monitored more heavily and visited more frequently than public postsecondary institutions.<sup>25</sup>

#### *Selected Options Regarding the "Ability to Benefit" Provision*

Listed below are several alternative legislative options regarding the "ability to benefit" provision for student aid eligibility under Title IV of the Higher Education Act. The discussion of each of these is relatively brief, since most of the arguments for and against each of these have been outlined in the preceding section.

##### *A. Continue the Current Provision Unchanged*

This option would be consistent with arguments that the primary purpose of Federal student aid is to maximize access to postsecondary education by financially needy students, while minimizing Federal interference with institutional autonomy and student choice. This option would also avoid any conflict between institutional admissions policies and Federal student aid policy.

Opponents of this approach might argue that it gives insufficient attention to the need to assure accountability for the use of Federal assistance, and to use limited Federal funds in an efficient manner. They might also argue that this approach is inconsistent with the goal of raising educational standards.

##### *B. Eliminate the "Ability to Benefit" Provision*

The requirement that all recipients of Federal postsecondary student aid be high school graduates or holders of GED certificates would be consistent with the accountability and efficiency goals discussed above to the extent that the performance of high school dropouts in postsecondary schools is less satisfactory than that of graduates. As noted earlier in this paper, there are minimal evaluation data on this subject, but those which exist suggest that non-high school graduates drop out of postsecondary programs somewhat more frequently than other students. However, non-completion rates are high for all groups of students in most types of postsecondary education, especially community college and proprietary school students. The requirements of high school graduation would symbolically serve to raise the standards for student financial aid, although at the risk of effectively eliminating some students who could have completed their educational programs and substantially raised their occupational status.

It might be questioned whether the requirement of a high school diploma or its equivalent for receipt of student aid, although not a *direct* Federal intrusion into the admissions process, nevertheless would act as such an intrusion. Legislation to eliminate "ability to benefit" could be drafted so as to affect individual, not institutional, eligibility, unlike the current legislation, which implicitly ties the two concepts. However, potential students denied access to Federal aid under such legislation might often be denied the opportunity to enroll in an educational program because of a lack of other sources of financial support. Further, many institutions might find it impracticable to maintain different standards for enrollment

and Federal aid eligibility, and adjust their admissions standards accordingly. Such Federal influence on admissions standards as requiring a high school diploma for postsecondary students has been openly favored by few Federal policy-makers.

*C. Adopt More Detailed "Ability to Benefit" Requirements and Rigorously Enforce These*

A possible way to continue the advantages of the "ability to benefit" provision while limiting abuses would be to make the Federal requirements, both statutory and regulatory, more detailed and specific. For example, schools may be *required* to conduct tests of potential students lacking a high school diploma or equivalent, and to report program completion rates for those passing the test and receiving Federal student aid. If annual dropout rates exceeded some threshold — say, 30 percent — the school could be required to make the test more rigorous (and therefore a more valid predictor of success in the school's educational program) or lose Federal student aid funds.<sup>26</sup> Alternatively, the "blanket approval" approach of the current provision could be dropped, and schools be allowed to provide Federal aid to students lacking a high school diploma only after requesting specific waiver authority from the Secretary of Education or a State agency. Standards or bases for granting of such a waiver could be outlined in Federal legislation.

Opponents of such an approach might argue that it would lead simply to increased paperwork and bureaucratic activity, and require more education agency staff than are likely to be available. They might also contend that it would be likely to lead to results not markedly different from either continuing the current provision (if the requirements were more detailed but not more rigorously enforced) or total elimination of the provision (if individual waivers were required and not automatically approved). It might further be argued that any single test, especially if developed by individual schools themselves, is always likely to be a weak and highly variable instrument for measuring student ability.

*D. Rely on Self-Regulation for Reduction of Alleged Abuse of the Current Provision*

This option would rely upon schools and their accrediting associations to voluntarily improve self-enforcement of the current "ability to benefit" provision. Proponents of this position might argue that self-regulation by schools and their accrediting associations is the most feasible and cost-effective way to improve implementation of the "ability to benefit" provision. This position would be consistent with the unlikelihood of additional Federal authority or enforcement staff, the enormous diversity of educational institutions participating in HEA Title IV student aid programs, and the self-regulatory purpose of accrediting associations. Representatives of accrediting associations have argued that undesirable practices by proprietary schools have already been greatly reduced in recent years, at least partly in response to the 1976 report by the Federal Trade Commission. They might argue that if public attention is focused on the remaining administrative difficulties of such schools, they will again respond by "cleaning up their own act," since to do so is in their best long-run interest. This approach would avoid what some would consider unwarranted and probably ineffective Federal intrusion into areas, such as admissions policies, which are properly the responsibility of schools and their accrediting bodies. It would be consistent with recent trends, as reflected in the Education Consolidation and Improvement Act of 1981, to place greater trust in, and give more flexibility to, State, local, and institutional officials in the administration of Federal education assistance programs.

A different yet conceptually similar approach would be to place greater emphasis on, and work to improve the quality of, the required independent audits of Federal

assistance programs. If these auditors could be made more aware of, and pay greater attention to, student aid program requirements, their audits could serve as a means of tighter enforcement without an increase in Federal staff or costs. The ED's office of the Inspector General is currently working with independent accountants' organizations to improve independent biannual audits with respect to student aid program requirements.

Opponents of these approaches might argue that these entities — the schools, accrediting associations, and independent auditors — have been relied upon in the past as the primary enforcers of Federal student aid regulations and, according to the GAO and FTC reports, have not performed adequately in this role. When schools and associations have strong incentives to maximize enrollments and membership, and independent auditors typically have very limited familiarity with the specific requirements of Federal student aid programs, there are limits to the extent to which these can be relied upon to strictly enforce Federal requirements. Overreliance on these organizations simply results in "the fox being left in charge of the chicken coop."

#### E. Greater Emphasis on, and Enforcement of, Related Requirements

A final possible option would be to leave the "ability to benefit" provision as it is, but to more rigorously enforce, and perhaps amend, *related* student aid requirements, thereby indirectly improving administration of the "ability to benefit" provision. Two such possible related requirements are those regarding "satisfactory academic progress" for continued receipt of student aid funds, and various refund policies for program dropouts. If the "satisfactory academic progress"<sup>27</sup> requirements were made more strict and/or more rigorously enforced, schools might have less incentive to enroll students unlikely to be able to complete their educational program.

The same might apply to refund policies. In addition, refund policies might be made more strict, even to the extent of being "punitive" in the case of schools with high dropout rates. For example, it might be required that if a school's dropout rate (either the general rate or the rate specifically for those enrolled on the basis of "ability to benefit") exceeded some level, the school would be required to refund *all* of the Federal grant funds that have been provided for the students who drop out, not just a proportionate share based on the percentage of the educational program that each student completed. This would certainly reduce, if not eliminate, the incentive of schools to enroll a maximum number of students, regardless of their likelihood of completing the program.

Critics of these approaches might argue that while they may be of value in dealing with areas of student aid abuse *other than* "ability to benefit," they are flawed in failing to deal *directly* with potential problems in administering the "ability to benefit" provision. Further, "punitive" refund policies might be said to be highly unfair to schools that have provided educational services to students before they dropped out, and deserve to be compensated for such services.

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<sup>27</sup>In this paper, the terms "high school graduates," "high school diplomas or their equivalent," etc., will be used interchangeably. In each case, the reference is to *both* "regular" high school graduates plus individuals who have earned a high school equivalency certificate of "general educational development" (GED). There is no distinction made between these two groups. Under Title IV, Higher Education Act, are authorized the major Department of Education student aid programs, including Pell Grants, Guaranteed Student Loans, National Direct Student Loans, and Supplementary Educational Opportunity Grants.

<sup>28</sup>The legislative history portions of this paper relied upon research previously conducted by Charlotte Fraas. See section 18 of P.L. 94-482, which amended section 1201 of the Higher Education Act (HEA), and section 6 of P.L. 95-566, which amended HEA section 481(a).

<sup>29</sup>House Report No. 94-1086, p. 23.

<sup>4</sup>Departments of Labor, Health and Human Services, Education, and Related Agencies Appropriations for 1986, hearings before the House Committee on Appropriations, 99th Congress, 1st session, Part 6, p. 790. The GAO report apparently referred to is "Many Proprietary Schools Do Not Comply With Department Of Education's Pell Grant Requirements," HRD-84-17, which is discussed later in this paper.

<sup>5</sup>"E.D. Officials, Citing Abuses, Seek End To Financial Aid For School Dropouts, Education Week, May 1, 1985. p. 10.

<sup>6</sup>*The American Freshman: National Norms For Fall 1984*. Higher Education Research Institute, University of California, Los Angeles.

<sup>7</sup>*Vocational Education and Social Mobility: A Study of Public and Proprietary School Dropouts and Graduates*, by Wellford W. Wilms. Prepared for the National Institute of Education, June, 1980.

<sup>8</sup>Proprietary Vocational and Home Study Schools, Federal Trade Commission.

<sup>9</sup>Testimony of Mary Jane Bond, an administrator at Wayne County Community College, Mich.

<sup>10</sup>The Condition Of Vocational Education, 1981. pp. 74-76.

<sup>11</sup>Many Proprietary Schools Do Not Comply With Department Of Education's Pell Grant Program Requirements, General Accounting Office report HRD 84-17.

<sup>12</sup>Wilms, Wellford W. "Proprietary Schools and Student Financial Aid, *Journal of Student Financial Aid*," Spring, 1983. pp. 7-18.

<sup>13</sup>Ibid.

<sup>14</sup>Many Proprietary Schools Do Not Comply With Department Of Education's Pell Grant Program Requirements. p. vii.

<sup>15</sup>Wilms, Wellford W. "Expanded Access to Job Training Through Federal Student Aid: A National Study Of Proprietary Vocational Schools and Students," *Journal of Student Financial Aid*, Spring 1984. pp. 17-31.

<sup>16</sup>Wilms, Wellford W. *Vocational Education and Social Mobility: A Study of Public and Proprietary School Dropouts and Graduates*, prepared for the National Institute of Education, June 1980.

<sup>17</sup>*The Terrain of Postsecondary Education*, National Commission on Student Financial Assistance, April 1983. p. 103.

<sup>18</sup>Ibid., p. 104.

<sup>19</sup>U.S. Department of Education, Justifications of Appropriations Requests. FY 1986, p. 10.

<sup>20</sup>Proprietary Vocational and Home Study Schools. p. 176.

<sup>21</sup>NOTE: in this paper, we do not attempt to evaluate these criticisms, but only to briefly report them as matters of public debate in the context of pro and con arguments regarding the "ability to benefit" provision.

<sup>22</sup>Ramist, Leonard. College Student Attrition and Retention. College Board Report no. 81-1, 1981. p. 2.

<sup>23</sup>The Profits of Failure: The Proprietary School Industry in New York State, New York State Consumer Protection Board, 1978. p. 73.

<sup>24</sup>House Report no. 94-1086. p. 23.

<sup>25</sup>For example, see the testimony by F. Jack Henderson, Jr., and William C. Clohan, Jr., before the House Subcommittee on Postsecondary Education, Aug. 1, 1985.

<sup>26</sup>Currently, the student aid regulations regarding "administrative capability and financial responsibility" provide for special scrutiny of schools where either the drop-out rate (over an 8-month period) exceeds 33 percent, or the Federal student loan default rate of graduates exceeds 20 percent. However, except with respect to the campus-based National Direct Student Loan (NDSL) program, a lack of school-specific data prevents comprehensive enforcement of this regulation. Such a lack of enforcement is exemplified by the GAO estimate that 40 percent of the proprietary schools it examined had withdrawal rates exceeding 33 percent. Further, schools violating these thresholds are not automatically eliminated from participation in Federal student aid programs. Such violations, again excepting the NDSL program, simply provide authorization for the Secretary of Education to require the school to "take reasonable and appropriate measures to alleviate those conditions" leading to the high withdrawal or default rates (34 CFR 668.17).

<sup>27</sup>Current Federal student aid regulations leave the determination of appropriate policies regarding refunds and "satisfactory academic progress" largely to institutional discretion.